



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,523	04/01/2004	Michael J. Connolly	P/3571-3	1573
2352 7590 01/22/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3723				
MAIL DATE		DELIVERY MODE		
01/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,523

Applicant(s)

CONNOLLY, MICHAEL J.

Examiner

Gary K. Graham

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-13 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-6, 14, 15 and 19 is/are rejected.
- 7) ☒ Claim(s) 7-9, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 6, 14, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohrbaugh (US patent 4,422,208).

The patent to Rohrbaugh discloses the invention as is claimed, including a brushless wire cleaner (10, figs.3,6) comprising a base plate (17), two side members (24) arranged on the base plate a distance from one another, a cover (18) extending from one side member to the other so that the base plate, side members and cover together define a channel in which a synthetic thermoplastics cleaning element (14) is slidably received. The cleaning element has an externally exposed surface, at least with respect to the channel, to be applied against the wire. A tension spring mechanism (26) is arranged to slide the cleaning element through the channel and into engagement with the wire cable. The cleaning element (14) has a slot (34) that receives the spring therein. The base plate is mounted to a frame (12) for support thereon. The frame includes a platform with leg members thereon (not numbered but shown, see fig.2).

With respect to claim 19, note "pegs" (20) attached to the base plate (17) and which are adjacent to side members (24). See figure 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohrbaugh (US patent 4,422,208).

The patent to Rohrbaugh discloses all of the above recited subject matter with the exception of the cleaning element being of polystyrene, the base plate being different size than the cover and the base plate being bolted to the frame.

While Rohrbaugh does not disclose the cleaning element being of polystyrene he does disclose the use of plastics. To employ a different material from Rohrbaugh would be well within that which one of skill in the art would find obvious. Merely selecting a different known material to make the cleaning element, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious, lacking some criticality of the plastics.

While Rohrbaugh discloses the base and cover as being the same size, to vary such does not appear to involve invention. Such does not appear significant or anything more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing a base and cover in the cleaner.

Allowable Subject Matter

Claims 10-13 and 16 are allowed.

Claims 7-9, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 07 November 2007 have been fully considered but they are not persuasive.

Applicant argues that the cleaning elements of Rohrbaugh are directed inwardly toward centrally contained wire ropes. While such is true, the cleaning elements of Rohrbaugh still have a surface externally exposed, with respect to the channel in which they slide, just as applicant's. As such, prior to insertion of the ropes, such surface is able or capable of being applied against a wire rope to be cleaned. Whether or not the cleaning element is directed inwardly towards the ropes or not does not prohibit reading on the present claims. The surfaces of the cleaning elements are still externally exposed from the cleaner such that they can contact the ropes. While applicant discusses the particular direction of the scraping forces, such does not appear at issue with respect to the application claims, as no particular directional application of forces is claimed.

Applicant also appears to argue that his device is a wiping device and not a scraping device, as disclosed by Rohrbaugh. However, it is pointed out that the claims are only directed to a “wire rope cleaner” having a “cleaning element”. The claims do not appear to reference wiping or make any distinction that would differentiate from Rohrbaugh. Clearly the device of Rohrbaugh will provide cleaning. In fact, Rohrbaugh discloses his device as a cleaning tool.

Applicant also argues that it would not be obvious to use polystyrene for the cleaning elements of Rohrbaugh. However, as set forth above, mere selection of alternative plastics would be well within that which one of skill in the art would find obvious. Selecting a different known material to make the cleaning element, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious, lacking some criticality of the plastics. While applicant references Styrofoam®, not all extruded polystyrene is Styrofoam®. Further, it should be noted that applicant does not disclose that his extruded polystyrene is Styrofoam® or has like properties to Styrofoam®. There are extruded polystyrenes that have comparable hardness as suggested by Rohrbaugh, that could perform the required cleaning action. Thus mere selection of any such polystyrene would not involve invention. There is no requirement or support that a Styrofoam® comparable polystyrene be employed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3723

GKG
18 January 2008